

304.15-020 Definitions.

- (1) "Business of viatical settlements" means an activity involved in but not limited to the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of viatical settlement contracts.
- (2) "Chronically ill" means:
 - (a) Being unable to perform at least two (2) activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence;
 - (b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
 - (c) Having a level of disability similar to that described in paragraph (a) of this subsection as determined by the Secretary of Health and Human Services.
- (3) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a viatical settlement contract but:
 - (a) Whose principal activity related to the transaction is providing funds to effect the viatical settlement contract or purchase of one (1) or more viaticated policies or to provide credit enhancement; and
 - (b) Who has an agreement in writing with one (1) or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts or to provide stop loss insurance.

"Financing entity" does not include a nonaccredited investor.

- (4) "Fraudulent viatical settlement act" includes:
 - (a) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits his employees or its agents to engage in acts including:
 - 1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, life insurance producer, financing entity, insurer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one (1) or more of the following:
 - a. An application for the issuance of a viatical settlement contract or policy;
 - b. The underwriting of a viatical settlement contract or policy;
 - c. A claim for payment or benefit pursuant to a viatical settlement contract or policy;
 - d. Premiums paid on a policy;

- e. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or policy;
 - f. The reinstatement or conversion of a policy;
 - g. In the solicitation, offer, effectuation, or sale of a viatical settlement contract or policy;
 - h. The issuance of written evidence of a viatical settlement contract or policy; or
 - i. A financing transaction; and
 - 2. Employing any device, scheme, or artifice to defraud related to policies acquired pursuant to a viatical settlement contract;
- (b) Any of the following acts committed by any person or permitted by a person to be committed by the person's employees or agents in the furtherance of a fraud or to prevent detection of a fraud to:
- 1. Remove, conceal, alter, destroy, or sequester from the executive director the assets or records of a licensee or other person engaged in the business of viatical settlements;
 - 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 - 3. Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or
 - 4. File with the executive director or the chief insurance regulatory official of another jurisdiction a document containing false information or which otherwise conceals information about a material fact from the executive director;
- (c) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, viatical settlement broker, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;
- (d) Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy issuer. For the purposes of this paragraph, "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or
- (e) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

- (5) "Industrial life insurance" is that form of life insurance written under policies of face amount of \$3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.
- (6) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for the policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from the funds and partly from funds contributed by the insured employees.
- (7) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.
- (8) "Viatical settlement broker" means an individual, partnership, corporation, or other person who or that for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces a viator to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, certified public accountant, or financial planner who is retained to represent the viator and whose compensation is not paid by the viatical settlement provider.
- (9) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator owning a policy or who owns or is covered under a group policy insuring the life of a person and the agreement establishes the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation of a policy at a later date regardless of the date that compensation is paid to the viator. "Viatical settlement contract" does not mean a written agreement entered into between a viator and a person having an insurable interest in the insured's life.
- (10) "Viatical settlement provider" means an individual, partnership, corporation, or other person who or that enters into an agreement with a person owning a policy under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the viatical settlement provider. Viatical settlement provider does not include:

- (a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a policy as collateral for a loan;
 - (b) The issuer of a policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider;
 - (c) Any natural person who is not licensed in accordance with KRS 304.15-700 and who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
 - (d) A related provider trust;
 - (e) An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, financing entity, special purpose entity, or related provider trust;
 - (f) A special purpose entity;
 - (g) A related provider trust; or
 - (h) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who acquires a viaticated policy from a viatical settlement provider.
- (11) "Viator" means a resident of this Commonwealth who is the owner of a policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. A viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one (1) viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage of ownership resides or, if the viators hold equal ownership, the state of residence of one (1) viator agreed upon in writing by all viators. "Viator" does not include:
- (a) A viatical settlement provider licensed pursuant to KRS 304.9-440;
 - (b) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
 - (c) A financing entity;
 - (d) A special purpose entity; or
 - (e) A related provider trust.
- (12) "Viaticated policy" means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.
- (13) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in viaticated policies. The trust shall have a written

agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the executive director as if those records and files were maintained directly by the licensed viatical settlement provider.

- (14) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.
- (15) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.

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History: Amended 2005 Ky. Acts ch. 58, sec. 6, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 472, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 403, sec. 1, effective July 15, 1998. -- Amended 1976 Ky. Acts ch. 233, sec. 1, effective June 19, 1976. -- Created 1970 Ky. Acts ch. 301, subtit. 15, sec. 2, effective June 18, 1970.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.